

110TH CONGRESS  
1ST SESSION

# H. R. 1951

To establish a mandatory system for employers to verify the employment eligibility of potential employees, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 19, 2007

Mr. ELLSWORTH introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and Labor and Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To establish a mandatory system for employers to verify the employment eligibility of potential employees, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Legal Employee  
5       Verification Act”.

1 **SEC. 2. DOCUMENT AND VISA REQUIREMENTS.**

2 (a) IN GENERAL.—Section 221(a) of the Immigra-  
3 tion and Nationality Act (8 U.S.C. 1201(a)) is amended  
4 by adding at the end the following:

5 “(3) VISAS AND IMMIGRATION RELATED DOCUMENT  
6 REQUIREMENTS.—

7 “(A) Visas issued by the Secretary of State and  
8 immigration related documents issued by the Sec-  
9 retary of State or the Secretary of Homeland Secu-  
10 rity shall comply with authentication and biometric  
11 standards recognized by domestic and international  
12 standards organizations.

13 “(B) Such visas and documents shall—

14 “(i) be machine-readable and tamper-re-  
15 sistant;

16 “(ii) use biometric identifiers that are con-  
17 sistent with the requirements of section 303 of  
18 the Enhanced Border Security and Visa Entry  
19 Reform Act of 2002 (8 U.S.C. 1732), and rep-  
20 resent the benefits and status set forth in such  
21 section;

22 “(iii) comply with the biometric and docu-  
23 ment identifying standards established by the  
24 International Civil Aviation Organization; and

25 “(iv) be compatible with the United States  
26 Visitor and Immigrant Status Indicator Tech-

1 nology and the employment verification system  
 2 established under section 274E.

3 “(C) The information contained on the visas or  
 4 immigration related documents described in subpara-  
 5 graph (B) shall include—

6 “(i) the alien’s name, date and place of  
 7 birth, alien registration or visa number, and, if  
 8 applicable, social security number;

9 “(ii) the alien’s citizenship and immigra-  
 10 tion status in the United States; and

11 “(iii) the date that such alien’s authoriza-  
 12 tion to work in the United States expires, if ap-  
 13 propriate.”.

14 (b) EFFECTIVE DATE.—The amendment made by  
 15 subsection (a) shall take effect on the date that is 6  
 16 months after the date of enactment of this Act.

17 **SEC. 3. EMPLOYMENT ELIGIBILITY CONFIRMATION SYS-**  
 18 **TEM.**

19 (a) IN GENERAL.—Chapter 8 of title II of the Immi-  
 20 gration and Nationality Act (8 U.S.C. 1321 et seq.) is  
 21 amended by inserting after section 274D the following:

22 “EMPLOYMENT ELIGIBILITY

23 “SEC. 274E. (a) EMPLOYMENT ELIGIBILITY CON-  
 24 FIRMATION SYSTEM.—

25 “(1) IN GENERAL.—The Commissioner of So-  
 26 cial Security, in consultation and coordination with

1 the Secretary of Homeland Security, shall establish  
2 an Employment Eligibility Confirmation System (re-  
3 ferred to in this section as the ‘System’) through  
4 which the Commissioner responds to inquiries made  
5 by employers who have hired individuals concerning  
6 each individual’s identity and employment authoriza-  
7 tion.

8 “(2) MAINTENANCE OF RECORDS.—The Com-  
9 missioner shall electronically maintain records by  
10 which compliance under the System may be verified.

11 “(3) OBJECTIVES OF THE SYSTEM.—The Sys-  
12 tem shall—

13 “(A) facilitate the eventual transition for  
14 all businesses from the employer verification  
15 system established in section 274A with the  
16 System; and

17 “(B) utilize, as a central feature of the  
18 System, machine-readable documents that con-  
19 tain encrypted electronic information to verify  
20 employment eligibility.

21 “(4) INITIAL RESPONSE.—The System shall  
22 provide—

23 “(A) confirmation or a tentative noncon-  
24 firmation of an individual’s identity and em-

1           ployment eligibility not later than 1 working  
2           day after the initial inquiry; and

3           “(B) an appropriate code indicating such  
4           confirmation or tentative nonconfirmation.

5           “(5) SECONDARY VERIFICATION PROCESS IN  
6           CASE OF TENTATIVE NONCONFIRMATION.—

7           “(A) ESTABLISHMENT.—For cases of ten-  
8           tative nonconfirmation, the Commissioner of  
9           Social Security, in consultation and coordina-  
10          tion with the Secretary of Homeland Security,  
11          shall establish a secondary verification process.  
12          The employer shall make the secondary  
13          verification inquiry not later than 10 days after  
14          receiving a tentative nonconfirmation.

15          “(B) DISCREPANCIES.—If an employee  
16          chooses to contest a secondary nonconfirmation,  
17          the employer shall provide the employee with a  
18          referral letter and instruct the employee to visit  
19          an office of the Department of Homeland Secu-  
20          rity or the Social Security Administration to re-  
21          solve the discrepancy not later than 10 working  
22          days after the receipt of such referral letter in  
23          order to obtain confirmation.

24          “(C) FAILURE TO CONTEST.—An individ-  
25          ual’s failure to contest a confirmation shall not

1 constitute knowledge (as defined in section  
2 274a.1(l) of title 8, Code of Federal Regula-  
3 tions, as in effect on the date of the enactment  
4 of the Legal Employee Verification Act).

5 “(6) DESIGN AND OPERATION OF SYSTEM.—

6 The System shall be designed, implemented, and op-  
7 erated—

8 “(A) to maximize its reliability and ease of  
9 use consistent with protecting the privacy and  
10 security of the underlying information through  
11 technical and physical safeguards;

12 “(B) to allow employers to verify that a  
13 newly hired individual is authorized to be em-  
14 ployed;

15 “(C) to permit individuals to—

16 “(i) view their own records in order to  
17 ensure the accuracy of such records; and

18 “(ii) contact the appropriate agency to  
19 correct any errors through an expedited  
20 process established by the Commissioner of  
21 Social Security, in consultation and coordi-  
22 nation with the Secretary of Homeland Se-  
23 curity; and

1 “(D) to prevent discrimination based on  
2 national origin or citizenship status under sec-  
3 tion 274B.

4 “(7) UNLAWFUL USES OF SYSTEM.—It shall be  
5 an unlawful immigration-related employment prac-  
6 tice—

7 “(A) for employers or other third parties  
8 to use the System selectively or without author-  
9 ization;

10 “(B) to use the System prior to an offer  
11 of employment;

12 “(C) to use the System to exclude certain  
13 individuals from consideration for employment  
14 as a result of a perceived likelihood that addi-  
15 tional verification will be required, beyond what  
16 is required for most job applicants;

17 “(D) to use the System to deny certain  
18 employment benefits, otherwise interfere with  
19 the labor rights of employees, or any other un-  
20 lawful employment practice; or

21 “(E) to take adverse action against any  
22 person, including terminating or suspending an  
23 employee who has received a tentative noncon-  
24 firmation.

25 “(b) EMPLOYMENT ELIGIBILITY DATABASE.—

1           “(1) REQUIREMENT.—The Commissioner of So-  
2           cial Security, in consultation and coordination with  
3           the Secretary of Homeland Security and other ap-  
4           propriate agencies, shall design, implement, and  
5           maintain an Employment Eligibility Database (re-  
6           ferred to in this section as the ‘Database’) as de-  
7           scribed in this subsection.

8           “(2) DATA.—The Database shall include, for  
9           each individual who is not a citizen or national of  
10          the United States, but is authorized or seeking au-  
11          thorization to be employed in the United States, the  
12          individual’s—

13               “(A) country of origin;

14               “(B) immigration status;

15               “(C) employment eligibility;

16               “(D) occupation;

17               “(E) metropolitan statistical area of em-  
18          ployment;

19               “(F) annual compensation paid;

20               “(G) period of employment eligibility;

21               “(H) employment commencement date;

22          and

23               “(I) employment termination date.

24           “(3) REVERIFICATION OF EMPLOYMENT ELIGI-  
25          BILITY.—The Commissioner of Social Security shall



1        prescribe, by regulation, a system to annually  
2        reverify the employment eligibility of each individual  
3        described in this section—

4                “(A) by utilizing the machine-readable doc-  
5        uments described in section 221(a)(3); or

6                “(B) if machine-readable documents are  
7        not available, by telephonic or electronic com-  
8        munication.

9        “(4) CONFIDENTIALITY.—

10               “(A) ACCESS TO DATABASE.—No officer or  
11        employee of any agency or department of the  
12        United States, other than individuals respon-  
13        sible for the verification of employment eligi-  
14        bility or for the evaluation of the employment  
15        verification program at the Social Security Ad-  
16        ministration, the Department of Homeland Se-  
17        curity, and the Department of Labor, may have  
18        access to any information contained in the  
19        Database.

20               “(B) PROTECTION FROM UNAUTHORIZED  
21        DISCLOSURE.—Information in the Database  
22        shall be adequately protected against unauthor-  
23        ized disclosure for other purposes, as provided  
24        in regulations established by the Commissioner  
25        of Social Security, in consultation with the Sec-

1           retary of Homeland Security and the Secretary  
2           of Labor.

3           “(5) AUTHORIZATION OF APPROPRIATIONS.—

4           There are authorized to be appropriated such sums  
5           as may be necessary to design, implement, and  
6           maintain the Database.

7           “(c) GRADUAL IMPLEMENTATION.—The Commis-  
8           sioner of Social Security, in coordination with the Sec-  
9           retary of Homeland Security and the Secretary of Labor  
10          shall develop a plan to phase all workers into the Database  
11          and phase out the employer verification system established  
12          in section 274A over a period of time that the Commis-  
13          sioner determines to be appropriate.

14          “(d) EMPLOYER RESPONSIBILITIES.—Each employer  
15          shall—

16                 “(1) notify employees and prospective employ-  
17                 ees of the use of the System and that the System  
18                 may be used for immigration enforcement purposes;

19                 “(2) use—

20                         “(A) a machine-readable document de-  
21                         scribed in subsection (a)(3)(B); or

22                         “(B) the telephonic or electronic system to  
23                         access the Database;

1           “(3) provide, for each employee hired, the occu-  
2           pation, metropolitan statistical area of employment,  
3           and annual compensation paid;

4           “(4) retain the code received indicating con-  
5           firmation or nonconfirmation, for use in investiga-  
6           tions described in section 212(n)(2); and

7           “(5) provide a copy of the employment  
8           verification receipt to such employees.

9           “(e) GOOD-FAITH COMPLIANCE.—

10           “(1) AFFIRMATIVE DEFENSE.—A person or en-  
11           tity that establishes good faith compliance with the  
12           requirements of this section with respect to the em-  
13           ployment of an individual in the United States has  
14           established an affirmative defense that the person or  
15           entity has not violated this section.

16           “(2) LIMITATION.—Paragraph (1) shall not  
17           apply if a person or entity engages in an unlawful  
18           immigration-related employment practice described  
19           in subsection (a)(7).”.

20           (b) INTERIM DIRECTIVE.—Before the implementa-  
21           tion of the Employment Eligibility Confirmation System  
22           (referred to in this section as the “System”) established  
23           under section 274E of the Immigration and Nationality  
24           Act, as added by subsection (a), the Commissioner of So-  
25           cial Security, in coordination with the Secretary of Home-

1 land Security, shall, to the maximum extent practicable,  
2 implement an interim system to confirm employment eligi-  
3 bility that is consistent with the provisions of such section.

4 (c) REPORTS.—

5 (1) IN GENERAL.—Not later than 3 months  
6 after the last day of the second year and of the third  
7 year that the System is in effect, the Comptroller  
8 General of the United States shall submit to the  
9 Committee on the Judiciary of the Senate and the  
10 Committee on the Judiciary of the House of Rep-  
11 resentatives a report on the System.

12 (2) CONTENTS.—Each report submitted under  
13 paragraph (1) shall include—

14 (A) an assessment of the impact of the  
15 System on the employment of unauthorized  
16 workers;

17 (B) an assessment of the accuracy of the  
18 Employment Eligibility Database maintained by  
19 the Department of Homeland Security and So-  
20 cial Security Administration databases, and  
21 timeliness and accuracy of responses from the  
22 Department of Homeland Security and the So-  
23 cial Security Administration to employers;

24 (C) an assessment of the privacy, confiden-  
25 tiality, and system security of the System;

- 1 (D) assess whether the System is being im-  
 2 plemented in a nondiscriminatory manner; and  
 3 (E) include recommendations on whether  
 4 or not the System should be modified.

5 **SEC. 4. IMPROVED ENTRY AND EXIT DATA SYSTEM.**

6 Section 110 of the Illegal Immigration Reform and  
 7 Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a)  
 8 is amended—

9 (1) by striking “Attorney General” each place  
 10 it appears and inserting “Secretary of Homeland Se-  
 11 curity”;

12 (2) in subsection (b)—

13 (A) in paragraph (1)(C), by striking “Jus-  
 14 tice” and inserting “Homeland Security”;

15 (B) in paragraph (4), by striking “and” at  
 16 the end;

17 (C) in paragraph (5), by striking the pe-  
 18 riod at the end and inserting “; and”; and

19 (D) by adding at the end the following:

20 “(6) collects the biometric machine-readable in-  
 21 formation from an alien’s visa or immigration-re-  
 22 lated document described in section 221(a)(3) of the  
 23 Immigration and Nationality Act (8 U.S.C.  
 24 1201(a)(3)) at the time an alien arrives in the  
 25 United States and at the time an alien departs from

1 the United States to determine if such alien is enter-  
2 ing, or is present in, the United States unlawfully.”;  
3 and

4 (3) in subsection (f)(1), by striking “Depart-  
5 ments of Justice and State” and inserting “Depart-  
6 ment of Homeland Security and the Department of  
7 State”.

8 **SEC. 5. PROTECTION OF EMPLOYMENT RIGHTS OF H2B**  
9 **WORKERS.**

10 The Secretary and the Secretary of Homeland Secu-  
11 rity shall establish a process under which a nonimmigrant  
12 worker described in section 101(a)(15)(H)(ii)(b) of the  
13 Immigration and Nationality Act (8 U.S.C.  
14 1101(a)(15)(H)(ii)(b)) who files a nonfrivolous complaint  
15 regarding a violation of this Act or the amendments made  
16 by this Act and is otherwise eligible to remain and work  
17 in the United States may be allowed to seek other appro-  
18 priate employment in the United States with an employer  
19 for a period not to exceed the maximum period of stay  
20 authorized for that nonimmigrant classification.

21 **SEC. 6. INCREASED FINES FOR PROHIBITED BEHAVIOR.**

22 Section 274B(g)(2)(B)(iv) of the Immigration and  
23 Nationality Act (8 U.S.C. 1324b(g)(2)(B)(iv)) is amend-  
24 ed—

1           (1) in subclause (I), by striking “not less than  
2       \$250 and not more than \$2,000” and inserting “not  
3       less than \$500 and not more than \$3,000”;

4           (2) in subclause (II), by striking “not less than  
5       \$2,000 and not more than \$5,000” and inserting  
6       “not less than \$4,000 and not more than \$8,000”;  
7       and

8           (3) in subclause (III), by striking “not less than  
9       \$3,000 and not more than \$10,000” and inserting  
10       “not less than \$6,000 and not more than \$20,000”.

○